1726 Nisbett contra Nisbet of Dirletown. And if ones estate
Consist of bonds bearing Annualrent from which his Relict is by
Law excluded, the same would Receive also a bipartite Division betwixt
the Children and the Deads part. Again, if all the Children beforis
=familiate or have Discharged their portion Natural, the like bipartite
division is to be observed betwixt the Relict and deads part.

If there be Neither wife nor Children, as when they are dead or
the testator was Never Married, all the Moveables fall under the De
=nomination of deads part. of which the testator may freely dispose
to whom he pleases without any hazard from a querela Inofficiose
testamenti a Complaint of an Undutifull testament. Thus a
Young Mans testament Deliberately Made without being drawn
into it by fraud or Circumvention was Sustained; Albeit he had
Disposed therein of all his goods and gear which he had from his
father and left Nothing to his poor brothers and Sister for their
Supply 26 July 1687 Preston and Touber his Spouse contra Scott

By the Common Law of England the testator had always
a free will of Disposing of his goods and Chattels in such Manner
as he thought best, except in some parts as particularly in
the province of York and principality of Wales where it was
Restrained by the writ Called breve de Rationabili parte
bonorum, which the Wife and Children had against the
Executors, for Recovery of part of the Goods that debts being
paid, were to be Divided in three equall parts, to wit one
part to the wife, the other to the Children, and the third to be
left at the will of the testator. Cowel Instit. jur. Anglic.
lib. 2 Tit. 18. Which Custom of Reserving a Reasonable part
of the goods to the widows and Children of Testator, called
the Reasonable part, Remains still in force in the City of
London as to the widows and Children of free Men; but
has been abolished in other parts of England by several
acts of parliament Stat. 4. & 5. Gul. & Mar. Cap. 2 Stat. 7 & 8
Gul. 3 Cap. 38 Stat. 2 & 3 Anne Cap. 5.

A Wife's Share of the husbands Moveables is not all
ways so large as the Childrens Legitim or deads part. Thus
personal bonds bearing Annualrent for Sums owing to the
testator, are Esteemed heretable as to her who has No Right to
any share of these; And Moveable as to the Children, who may
Claim their Natural Portion thereof, and as to Legataries and other
Nearest of kin who have Interest in the deads part Act 32 Parl.
sess. 1 Chs. 2 Unless the Testator die before the term of payment
of Annualrent, or after a Charge or Pursuit thereon for pay
=ment; in either of Which Cases, personal bonds bearing Annual
rent

Annualrent are simply Moveable 12 feb. 1623 Wallace contra
McDoual 30 June 1624 Smith contra Andersons Relict 23 Decemb.
1668 McKenzie contra Robertsons Stair lib. 3 Tit. 8 § 47. The Reason
of this Difference betwixt the extent of the widow's Share and that
of the Children's Legitim and deads part is, because Law presumes
wives to be sufficiently provided by their Contracts of Marriage;
Whereas Children and other Nearest of Kin have often No other
provision, than a Legal share of the Moveables. But then as the
Relict has no benefit by personal bonds bearing Annualrent gran
=ted to her husband whereof the term of payment of the Annual
=rent was Come before his death; Neither is her share of the Mo=
=veables Affected with Debts of that Nature owing by him while
the deads part and Legitim are sufficient to satisfy the same,
tho there be not sums bearing Annualrent in bonis defuncti for
satisfying such debts 19 July 1664 Scrimseor contra Executors of
Murray 23 Decemb. 1668, McKenzie contra Robertsons 27 Janu
=ary 1713 Montrief and her husband contra Monipenny Stair lib.
3 Tit. 4 § 24 in fine. And the Relict hath also her share of the
Annualrent of all bonds tho heretable due before tho not after
Dissolution of the Marriage. Again, tho a testator may Dispose
of personal bonds bearing Annualrent, as well as of his other
Moveables, yet such bonds secluding Executors (which are heretable
as to the Creditor, and Moveable as to the Debtor) do not fall under
the deads part.

I shall now more particularly Clear up the Respective
Interests aforesaid of heirships, jus Relictæ, Legitim and deads
part. An heir of line has not only Right to the heretage of his
predecessor, but also to the heirships Moveables, of which the
testator, if a person who by law may have heirship, cannot
Dispose in testament Stair lib. 3 Tit. 4 § 24 Vers. as to Movea
=bles in fin. lib. 3 Tit 5 § 9. But the heir has no share in the rest
of the Moveables except in two Cases. 1st If the heir Collate, and
let the other Nearest of Kin share Equally with him in all he
can succeed to as heir, he comes in pari passu with the rest
16 July 1678 Murray contra Murray. Because the only Reason
why the heir is Excluded from sharing in Mobilibus is, because
the sole succession to the heretage is ordinarly better than a
Legitim in the Moveables. But where he does not find his Account
in holding himself Content with the heretage and is willing to Collate
the same, he is admitted with the other Children to share in the
Moveables seeing he is not to be in a worse case than they. But
an heir was not admitted to a share in the executry with the Younger
Children, unless he Collate and Communicate to them Not only the here
=tage